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EXAMINER	
ALEJANDRO, RAYMOND	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/954,806	Applicant(s) AKASHI ET AL.	
	Examiner Raymond Alejandro	Art Unit 1745	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08/14/07 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1, 4-7 and 13-17*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see next page.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Raymond Alejandro
Primary Examiner
Art Unit: 1745

Response to Arguments

1. Applicant's arguments filed 08/14/07 have been fully considered but they are not persuasive.

2. Applicant's arguments focus on the assertion that "*While the EP'960 reference may disclose use of ethylene carbonate, propylene carbonate, diethyl carbonate and methyl ethyl carbonate as auxiliary solvents, it clearly does not contemplate the use of any of these compounds as the main solvent...*". However, this assertion is not sufficient to overcome the prima-facie case of obviousness as it is clear enough from reading the prior art of record (i.e. the EP'960) that any one of those organic solvents may be employed alone or in combination as part of the electrolytic solvent of the EP'960. The fact that the EP'960 reference prefers to use γ-butyrolactone as a primary solvent in certain embodiments cannot be equated to an assertion that the reference itself does not envision AT ALL that at least one of the previous organic solvents can be used therein. Therefore, the examiner largely disagrees with applicant's assertion.

Furthermore, nothing in the present claims clearly stipulates the specific weight percent, amount or content of any one of applicant's claimed solvent so as to set forth that one of those organic solvents is chiefly used over the other. For instance, applicant's claims call for "*wherein the electrolyte contains a main non-aqueous solvent selected from the group consisting of ethylene carbonate, propylene carbonate, diethyl carbonate, methyl ethyl carbonate, and any mixture thereof*". From this language, it can be readily concluded that the limitation "*and any mixture thereof*" allows for the inclusion of only one (1) solvent, or two (2) solvents, three (3) solvents and/or four (4) solvents. In the event that more than two (2) solvents become part of applicant's electrolytic solution, it would be immediately unclear to a skilled artisan to recognize

which solvent is "*applicant's main solvent*" as no specific amount, weight percent or content of solvent is further specified in the present claims. As such, the limitation "*main...solvent*" as currently intended by the applicant is irrelevant to the patentability of the present invention for the reasons discussed above. This is discussed here as applicant appears to imply that the term "*main*" should be given a particular connotation as if it were setting forth an implied content or weight percent of the claimed solvents. Interpretation of the claim scope in a literal manner absent further compositional requirements of the solvent also supports the position taken by the Examiner.

The following responses to applicant's arguments were presented in prior office actions, and are incorporated and/or maintained herein for the reasons of record:

3. Now, the one argument raised by the applicant is that "*the EP'960 fails to disclose or provide motivation for using an electrolyte containing a main non-aqueous solvent selected from the group consisting of ethylene carbonate, propylene carbonate, diethyl carbonate, methyl ethyl carbonate, and any mixture thereof*". But applicant has erred in advancing the aforementioned argument because: (***emphasis added***→) the EP'960 discloses the use of cyclic carbonates such as propylene carbonate (PC), ethylene carbonate (EC) and mixing it with another solvent such as diethyl carbonate (DEC) and methyl ethyl carbonate (MEC) (P00045-0047 of EP'960). Shown is the desirability of using a cyclic carbonate and/or a chain carbonate as a solvent as it permits improving the charge-discharge efficiency and cycle characteristics.

[0045] It is desirable to use a cyclic carbonate together with BL in the present invention because the cyclic carbonate permits improving the charge-discharge efficiency.

[0046] The cyclic carbonate used in the present invention includes, for example, propylene carbonate (PC), ethylene carbonate (EC), vinylene carbonate (VC), and trifluoropropylene carbonate (TFPC). Particularly, if EC is used together with BL, the charge-discharge characteristics and the large discharge characteristics can be markedly improved. It is also desirable to prepare a mixed solvent by mixing BL with at least one kind of a third solvent selected from the group consisting of PC, VC, TFPC, diethyl carbonate (DEC), methyl ethyl carbonate (MEC) and an aromatic compound. The mixed solvent of the particular construction permits improving the charge-discharge cycle characteristics.

[0047] In order to decrease the viscosity of the mixed solvent, it is possible for the nonaqueous solvent containing BL to further contain 20% by volume or less of a solvent having a low viscosity selected from the group consisting of, for example, a chain carbonate, a chain ether, and a cyclic ether.

The examiner does not understand why applicant has advanced the aforementioned argument in favor of patentability of his invention as the teaching of the EP'960 concerning the employment of carbonate solvents is CLEAR enough. Applicant's representative is respectfully requested to carefully read and understand the teachings of any reference before advancing any argument that add nothing to the patentability of the invention at hand. Present claims have been more than twice rejected, present application is ready for appeal. Enough has been said.

4. Applicant has argued that "*EP'960 does not disclose or suggest positive and negative electrode wherein a charge capacity of the positive electrode is larger than the charge capacity of the negative electrode*". In response, the examiner contends that the charge capacity of both the positive electrode and the negative electrode are associated with the specific materials used to make both electrodes. Accordingly, since the prior art of record teaches substantially the same electrode materials or substantially similar electrochemical active materials for the disclosed battery (*i.e. negative electrode: carbonaceous material such as graphite, coke, carbon and the like, and positive electrode: lithiated transition metal oxides capable of occluding/releasing light metal*), it is reasonable to contend that the disclosed positive and electrode materials, when paired, are capable of delivering the same charge capacity characteristics as instantly claimed. Since PTO does not have adequate equipment to perform respective analytical test, applicant

carries the burden of providing scientific or objective evidence to show that the battery disclosed by the EP'960 is at all incapable of exhibiting the claimed charge capacity.

5. Applicant has also argued that "EP'960 does not disclose or suggest a battery wherein, when a voltage of the battery is lower than an overcharge voltage of the battery during charging of the battery, light metal precipates on a surface of the negative electrode after a charge capacity of the negative electrode has been exceeded". In the first place, the examiner states that the limitation or clause "when a voltage of the battery is lower than an overcharge voltage of the battery during charging of the battery" is simply a conditional statement or operational proviso which fails to positively limit the present invention as instantly claimed. In other words, light metal precipitation on the negative electrode surface occurs only when such a condition takes place. Meanwhile, when battery voltage exceeds the overcharge voltage, if ever possible, light metal precipation does not necessarily occur. Therefore, the above limitation or clause is not deemed to be a positive limitation required by the secondary battery at any time. Again, such a precipitation is only visible or manifested when battery is operated under certain voltage conditions. Nevertheless and without losing the scope of the foregoing Examiner's statement, the examiner verily believes that by having shown that the battery of the prior art does: 1) include the same positive electrode and negative material composition; and, b) meet the specified ratio (A/B) requirement (i.e. the ratio (A/B) of the thickness A of the positive electrode mixture layer and thickness B of the negative electrode mixture layer is 0.92 or more), all the above-mentioned battery characteristics and/or functions are thus inherent as the battery structure recited in the reference is substantially identical to that of the instant claims, and therefore, claimed properties or functions are presumed to be inherent (**MPEP 2112. Requirements of Rejection Based on**

Inherency). See rejection and Examiner's note above. Applicant has done nothing to rebut the prima-facie case of inherency relied upon by the examiner to address these limitations. No objective evidence has been provided to proof otherwise. From an Examiner's perspective, this voltage characteristic of the battery is basically a measurable characteristic thereof which fails to better define a structure or physical characteristic of the battery. Therefore, since PTO does not have adequate equipment to perform respective analytical test to measure voltage characteristic of the battery, applicant again bears the burden of providing scientific or objective evidence to show that the battery disclosed by the EP'960 is at all incapable of exhibiting the claimed voltage characteristic.

6. The gist of applicant's arguments is solely grounded on the assertion that the amended "ratio A/B of 1.186 or more" is not disclosed in the prior art of record. However, this assertion is still insufficient and ineffective to overcome the prima-facie case of obviousness. Concerning this matter, the examiner points that Table 6 of the EP'960 reference directly exemplified positive electrode and negative electrodes having different thickness. Furthermore, it can be observed from viewing Table 6 of the EP'960 reference direct exemplifications of positive electrode thicker than a negative electrode. In support of the prima-facie case of obviousness articulated by the examiner, it can be further observed that EXAMPLE 36 (See Table 6 of the EP'960) employs a negative electrode with a thickness of 80 μm. In addition to that, the EP'960 reference directly teaches that where positive electrode layers are formed a positive layer has a thickness of 10 to 100 μm (Paragraph 0119 of the EP'960 reference). Of particular interest is the teaching that if the positive electrode layer is thicker than 100 μm, the non-aqueous electrolyte is concentrated on the surface of the positive electrode at rapid change and at rapid discharge. As a

result, the electrode reaction scarcely proceeds inside the positive electrode, leading to a shortened cycle life (Paragraph 0119 of the EP'960 reference). Thus, the EP'960 reference expressly warns against using positive electrode layers thicker than 100 μm. That is to say, the EP'960 reference advises to limit the thickness of the positive electrode layer to a magnitude of 100 μm or less. That being said, the examiner states that a combination of the specific teachings of the EP'960 reference including a negative electrode with a thickness of 80 μm as exemplified in Example 36 and a positive electrode having a layer thickness of 100 μm for the reasons above would result in a ratio A/B of 1.25 which fully meets the claimed ratio A/B of 1.186 or more. It is noted that the foregoing teachings of the EP'960 does not represent pick-and-choose of possible thicknesses, indeed, they are derived from a specific exemplification and concerns presented in the EP'960 reference.

In this case, it is further noted that, at least, the end point of 100 μm constitutes a valid data point and thus it fully encompasses the claimed requirement as the end point represents a specific disclosure of a discrete embodiment of the invention disclosed by the prior art which amounts to a complete description and, therefore, a direct teaching fully encompassing the claimed range. **See Ex Parte Lee 31 USPQ2d 1105**.

While the EP'960 reference furnishes examples of positive electrodes and negative electrodes having particular distinct thicknesses, the EP'960 reference clearly is not limited to that exemplified embodiment. Indeed, the EP'960 reference makes it clear that examples of Table 6 showing specific thicknesses are merely illustrative by expressly noting that other thicknesses (*i.e. thickness ranging from 10 to 100 μm are preferred*) for both the positive electrode and the negative electrode layers are within the purview of the disclosed invention. See paragraph 0119 and 0125 as well as Table 6 itself of the EP'960 reference.

Based on the totality of record, including due consideration of the applicant' arguments, specification and evidentiary embodiments, the examiner determines that the preponderance of evidence weighs most heavily in favor of obviousness within the meaning of Section 103(a). Accordingly, the examiner reaffirms the examiner's original decision rejecting claims 1, 4-7 and 13-14 under 35 U.S.C. 5 103 as unpatentable over the disclosure of the EP'960 reference by itself.

7. Applicant has contended that the prior art of record does not expressly disclose "*the specific ratio of the thickness A/B (for the positive electrode layer and the negative electrode layer, respectively) to be 1.186 or more*" and that "*there is no teaching or suggestion...that would suggest that the thickness of the positive electrode layer needs to be thicker or should be thicker than the thickness of the negative electrode layer*". Firstly, assuming that there is adequate support for the specific claimed A/B ratio (*see items 1-2 supra*), the examiner asserts that applicant is incorrect and inaccurate for the reasons and analysis presented infra:

A) Given that the EP'960 reference has clearly disclosed that the upper limit in the thickness for both the positive electrode and the negative electrode is preferably 85 μm, as well,

in general, electrode layers having a thickness of 10-100 μm, it is fairly reasonable to contend that the EP'960 reference envisions at first the claimed thickness, and consequently, the claimed ratio A/B. (**Emphasis added→**)For instance, if the upper limit in the thickness for the positive electrode is chosen to be 100 μm, then the thickness of the negative electrode can be thus chosen to be about 80 μm which still satisfies a preferred electrode thickness; or in the other hand, if the positive electrode thickness is chosen to be 100 μm, then the thickness of the negative electrode can be thus chosen to be about 84.3 which is still within the generally disclosed range. In this regard, it is noted that this examiner's position is taken in light of the specific electrode thickness exemplified in TABLE 6 (See portions of TABLE 6 below) which shows positive electrodes and negative electrodes having different thickness dimension. Therefore, the EP'960 reference does not strictly require that the thickness dimension of both electrodes (i.e. the positive electrode and the negative electrode) be identical or the same. In other others, the EP'960 reference at once envisages different thickness for both electrodes. Thus, the battery of the EP'960 still meets the claimed ratio (A/B) requirement of being equal to or greater than 1.186.

B) (**Emphasis added→**) Furthermore, as illustrated in **Table 6- Examples 26-35**, the EP'960 reference shows with sufficient specificity that the thickness of the positive electrode is greater than the thickness of the negative electrode. That is to say, the EP'960 reference at once envisages the general concept of having positive electrode layers thicker than negative electrode layers. In addition to that, **Table 6** correlates initial capacity of batteries to electrode thicknesses (page 38, lines 28-30).

Table 6 below shows specific examples wherein the thickness of the positive electrode differs from the thickness of the negative electrode:

Table 6

	Capacity (Ah)	Thickness of one layer of positive electrode (μm)	Thickness of one layer of negative electrode (μm)
Example 26	0.32	48	45
Example 27	0.35	60	56
Example 28	0.30	39	36
Example 29	0.25	24	23
Example 30	0.12	10	9.5
Example 31	0.30	48	45
Example 32	0.31	48	45
Example 33	0.33	48	45
Example 34	0.31	48	45
Example 35	0.28	48	45
Example 36	0.36	60	65
Example 37	0.38	80	80
Example A	0.35	87	90
Example B	0.05	8	8
Comperative example 12	0.30	105	108
Comperative example 13	0.10	8	6

(Continued)

EP 0 997 960 A2

8. In response to applicant's arguments about "*the charge capacity of the battery and the metal precipitation*", the examiner strenuously points out that there is a relationship between the ratio (A/B) of the thickness of the positive electrode layer and the negative electrode layer thickness and the battery charge capacity allowing the specific Li-precipitation. Applicant's attention is respectfully but energetically directed to the "***Examiner's Note***" above (in the body/text of the rejection) which provides a detailed analysis and clearly explains such relationship which can be further characterized in that the claimed charge capacity-Li precipitation does occur as long as the ratio (A/B) of the positive electrode thickness and negative electrode thickness is equal to or more than 0.92. Thus, as long as the prior art of record does teach such specific (A/B) ratio magnitude, the battery of the prior art will be able to achieve the charge capacity-Li precipitation characteristic as instantly claimed. And so, it is ultimately stated that the prior art of record still provides the necessary functional and structural interrelationship to meet the specifically claimed requirement.

9. Although believed unnecessary due to the new grounds of rejection, the examiner likes to address certain applicants' arguments. In response to applicants' arguments that the prior art of record does not disclose the specific ratio (A/B) between the positive electrode and negative electrode, the examiner wishes to point out that given that the EP'960 reference has clearly disclosed that the upper limit in the thickness for both the positive electrode and the negative

electrode is preferably 85 μm, as well, in general, electrode layers having a thickness of 10-100 μm, it is fairly reasonable to contend that the EP'960 reference envisions at first the claimed thickness, and consequently, the claimed ratio A/B. For instance, if the upper limit in the thickness for the positive electrode is chosen to be 85 μm, then the thickness of the negative electrode can be thus chosen to be 81 μm which still satisfies a preferred electrode thickness; or in the other hand, if the positive electrode thickness is chosen to be 100 μm, then the thickness of the negative electrode can be thus chosen to be 96 which is still within the generally disclosed range. In this regard, it is noted that this examiner's position is taken in light of the specific electrode thickness exemplified in TABLE 6 (See portions of TABLE 6 below) which shows positive electrodes and negative electrodes having different thickness dimension. Therefore, the EP'960 reference does not strictly require that the thickness dimension of both electrodes (i.e. the positive electrode and the negative electrode) be identical or the same. In other others, the EP'960 reference at once envisages different thickness for both electrodes. Thus, the battery of the EP'960 still meets the claimed ratio (A/B) requirement of being equal to or greater than 1.186.

10. Additionally, in view of the fact that the EP'960 reference teaches that the upper limit in the thickness for both the positive electrode and the negative electrode is preferably 85 μm, as well, in general, electrode layers having a thickness of 10-100 μm, and that these thickness are preferable simply because if the electrode layer is thicker than the specific dimension, the non-aqueous electrolyte concentrates on the surface of the positive electrode at rapid change and at rapid discharge, and as a result, the electrode reaction scarcely proceeds inside the electrode, leading to a shortened cycle life; in addition, where the thickness falls within this range, the large

discharge characteristics and the cycle life are markedly improved. Thus, one of ordinary skill in the art would find good motivation to make positive electrodes and negative electrodes within the claimed range. Hence, the EP'960 reference directly teaches the electrode thickness within the claimed range, and still meets the claimed ratio (A/B) requirement of being equal to or greater than 1.038. Accordingly, the EP'960 reference recognizes that the electrode thickness per se is a variable which achieves a recognized result, thus, the claimed range of the electrode thickness and thus, the A/B ratio result from the characterization as routine experimentation of an optimum or workable range. Accordingly, the electrode thickness is being construed as a result-effective variable. *In re Aller 105 USPQ 233, 235; In re Hoeschele 160 USPQ 809, In re Antonie 195 USPQ 6* (***See MPEP 2144.05 II. Optimization of Ranges***).

11. Moreover, where the only difference between the prior art and the claims is a recitation of relative dimensions (*i.e. changes in size/proportion*) of the claimed feature and a feature having the claimed relative dimensions would not perform differently than the prior art device/element/ member, the claimed device/element/member is not patentably distinct from the prior art device/element/member. That is, limitations relating to the size of the feature/element/member are not sufficient to patentably distinguish over the prior art as it is noted that changes in size (*thickness*) is a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular thickness of the claimed electrode is significant. *In re Rose 105 USPQ 237; In re Rinehart 189 USPQ 143; In Gardner v. TEC Systems, Inc., 220 USPQ 777 & 225 USPQ 232,* **(See MPEP 2144.04 [R-1] Legal Precedent as Source of Supporting Rationale).**

12. The assertion that the prior art of record fails to reveal "*the specific charge capacity/characteristic*" is still insufficient to overcome this rejection. In this regard, it is noted that applicants have argued that the battery of the present invention is specifically engineered to avoid the precipitation of lithium metal (in order to attain the specific second capacity component) by simply featuring a battery comprising a negative electrode comprising a graphitic material with certain charge capacity and a positive electrode of Li-oxide based material. Nevertheless, since the battery of the prior art does include the same positive electrode and negative material composition, the specific characteristic/function of occluding/releasing and/or precipitating/dissolving light metals is inherent because products of identical chemical composition can not have mutually exclusive properties, and thus, the claimed property i.e. capable of occluding and releasing light metal, and capable of precipitating and dissolving light metal thereon is necessarily present in the prior art active material.

Therefore, because the examiner has provided a substantive sound basis and a technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art, and therefore, to assert that the specific claimed occluding/releasing and/or precipitating/dissolving light metals characteristics are inherent to the very same nature of the positive electrode and negative electrode material composition of the prior art battery (*as also argued by applicants*). Applicants' attention is particularly directed to the *Examiner's Note* presented hereinabove (refer to the *Examiner's Note* in body of the rejection above). In consequence, the prior art's battery seems to be identical except that the prior art is silent as to an inherent function, property and/or characteristic. In that, it is noted that the extrinsic evidence makes clear that the missing descriptive matter is

necessarily present in the specific method described in the reference, and that it would be so recognized by persons of ordinary skill. As a result, once a reference teaching method appearing to be substantially identical is made the basis of the rejection, and the examiner presents evidence or reasoning tending to show inherency, the burden shifts to the application to show an unobvious difference. Hence, applicants need to prove the prior art does not necessarily or inherently possess the characteristics, and/or function of his/their secondary battery. *In re Fitzgerald 205 USPQ 594, 596 and In re Best 195 USPQ 430* (See ***MPEP 2112. Requirements of Rejection Based on Inherency)***.

As a result, the examiner asserts that it is not enough that applicant's representative personally believe that the prior art does not perform or teach such inherently identified characteristic/function. That is to say, the arguments of counsel cannot take the place of evidence in the record. An assertion of what seems to follow from common experience is just attorney argument and not the kind of factual evidence that is required to rebut a prima facie case of inherent anticipation/obviousness (See ***MPEP 2145 Consideration of Applicant's Rebuttal Arguments***).

RAYMOND ALEJANDRO
PRIMARY EXAMINER